***THE HON'BLE SRI JUSTICE P.S. NARAYANA**

**+W.P.No.11328 of 2007**

% 07-12-207

# Annagani Yedukondalu

**..... PETITIONER**

Vs.

$ Sri Rameshwara Swamy Vari Devastanam,
Ilavaram Village, Bhattiprolu Mandal,
Guntur District, rep., by its Manager.

**.....RESPONDENT**

<GIST:

>HEAD NOTE:

! Counsel for the petitioner : Sri M. Vidyasagar

^ Counsel for respondent : Sri V.T.M. Prasad,
SC for the respondent

?CASES REFERRED :

**THE HON'BLE SRI JUSTICE P.S. NARAYANA**

**WRIT PETITION No.11328 of 2007**

**Date: 07.12.2007**

Between:

Annagani Yedukondalu

... PETITIONER

AND

Sri Rameshwara Swamy Vari Devastanam,
Ilavaram Village, Bhattiprolu Mandal,
Guntur District, rep., by its Manager.

... RESPONDENT

**THE HON'BLE SRI JUSTICE P.S. NARAYANA**

**WRIT PETITION No.11328 of 2007**

**ORDER:-**

WVMP.No.1791 of 2007 is filed to vacate the interim order dated 05.06.2007 made in WPMP.No.14125 of 2007 in WP.No.11328 of 2007.

2. At the request of the counsel on record, the writ petition is being disposed of finally.

3. Sri M. Vidyasagar, learned counsel representing the writ petitioner had taken this Court through the contents of the affidavit and would submit that in the facts and circumstances of the case, relief prayed for in the writ petition to be granted.

4. On the contrary, Sri V.T.M. Prasad, learned Standing Counsel representing respondents had taken this Court through the contents in the counter-affidavit and would submit that in the facts and circumstances, the writ petition is liable to be dismissed.

5. Heard the counsel and perused the records produced before the Court.

6. The writ petition is filed for a writ of Certiorari calling for the

records relating to the impugned notice issued by the Manager of the subject temple dated 23.05.2007 contemplating to put the leasehold rights of land in public auction on 06.06.2007, admeasuring an extent of Ac.1-20 cents in Sy.No.691 in Ilavaram Village, Bhattiprolu Mandal, Guntur District belonging to Sri Rameshwara Swamy Temple, Ilavaram which petitioner is entitled to own as landless poor person, as bad, illegal, arbitrary and opposed to law and the same may be quashed.

7. It is stated that the petitioner is the lessee of the lands belonging to the respondent temple to an extent of Acs.1-20 cents; that he was inducted into possession of the schedule mentioned lands being declared as the highest bidder in public auction by quoting a maktha of 21 bags of paddy per year; that the lease was also approved by the competent authority i.e., the Commissioner of Endowments by Proceedings D.Dis.No.C1/40495/98, dated 03.09.1998 and that by virtue of the said lease granted in his favour, he was in possession of the schedule mentioned lands by paying maktha regularly to the temple till 2005.

8. Further it is stated that consequent to the restoration of Section 82 of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987, hereinafter would be referred to as the Act for the purpose of convenience, by the Hon'ble Supreme Court, the Government issued G.O.Ms.No.379, specifying the Assistant Commissioner of Endowments to be the competent authority under Rule 3 to adjudicate the claims of the cultivating tenants and their eligibility for being declared as landless poor persons to avail the benefit as per Section 82 of the Act. The petitioner filed appropriate application before the Assistant Commissioner of Endowments, Guntur and the same being

enquired upon, he was declared as “landless poor person” by proceedings in Rc.No.B2/506/2005, dated 23.03.2005.

9. Further it is stated that the petitioner, who was also in possession of the temple land, was deprived of his right to cultivate the land by a group of persons, who encroached the entire extent of land admeasuring Acs.12-83 cents in Sy.No.691 belonging to respondent temple immediately after the second crop i.e., Rabi.

10. Further it is stated that the Deputy Commissioner of Endowments, who is conferred with the power to remove encroachments of temple lands, exercised his power under Section 85 of the Act and passed an order by proceedings Rc.No.5661/05 dated 06.07.2005 ordering removal of encroachments allegedly made by a group of persons. Accordingly, the said order was executed only in April, 2007, and all encroachers were evicted from lands belonging to the temple and the petitioner was no way responsible for the lapse on the part of temple to evict the encroachers.

11. Further it is stated that the Manager of the respondent temple instead of handing over possession of the land to the petitioner, after removal of encroachments, proposes to put the leasehold rights of the temple lands in public auction by the impugned notice and that the action of the Manager of the respondent temple is nothing but an act, which is purely aimed at depriving the right of the petitioner to avail the benefit of Section 82 of the Act and the judgment of the Hon’ble Supreme Court, which recognizes the entitlement of landless poor persons to purchase the temple land on 75% of the market value and also deprives him of eking his livelihood by cultivating the said lands. In such

circumstances, the writ petitioner approached this Court praying for appropriate reliefs.

12. This Court issued Rule Nisi on 05.06.2007. In WPMP.No.14125 of 2007 this Court, while ordering notice, made the following order:

> "Pending further orders, the respondents are at liberty to proceed with the auction pursuant to the impugned auction notice dated 23.05.2007. However, the same shall not be confirmed in respect of Acs.1-20 cents in Sy.No.691 of Ilavaram Village, which is the subject matter of this writ petition."

13. In the affidavit filed in support of WVMP.No.1791 of 2007 it is averred that it is true that the petitioner participated in the public auction conducted on 30.07.1998 for three years and became the highest bidder and accordingly he was put into possession of land to the extent of Ac.1-20 cents on condition of payment of 21 bags of paddy as maktha every year; that he remained in possession of the subject land till 2005 as encroacher after operation of three years lease and that he was declared as landless poor person under Section 82 of the Act vide proceedings in Rc.No.B2/806/2005, dated 23.03.2005.

14. Further it is stated that the Government of Andhra Pradesh issued a notification in January, 1999 under Section 4(1) of the Land Acquisition Act, 1894. Questioning the said notification, the tenants of the institution filed Writ Petition No.25157 of 2000, which was dismissed for non-prosecution on 02.12.2005. Pending the writ petition, there was interim stay and in the interregnum period the tenants continued to cultivate the land till 2005. When some of the villagers encroached upon the subject land on 04.05.2005 by raising small huts, then the tenants

filed another Writ Petition No.11255 of 2005 before this Court and this Court by order dated 17.05.2005 made in WPMP.No.14432 of 2005 in WP.No.11255 of 2005 directed the parties to maintain status quo.

15. Further it is stated that the institution filed an application before the Deputy Commissioner, Endowments Department, Guntur for eviction of encroachers on the land belonging to it. Upon enquiring the matter, the Deputy Commissioner directed the Assistant Commissioner, Endowments Department, Guntur to remove the encroachment by order dated 06.07.2005. Thereupon, the encroachers filed a suit in O.S.No.348 of 2005 on the file of the I Additional Junior Civil Judge, Repalle, who by order dated 29.08.2005 made in I.A.No.141 of 2005 in O.S.No.348 of 2005, granted interim injunction. Aggrieved by the above interim order, the institution preferred a revision petition in CRP.No.4495 of 2005 and the same was dismissed on 02.09.2005. Thereupon, the respondents filed Writ Petition No.1145 of 2006, wherein this Court by order dated 25.01.2006 granted interim suspension of the order dated 29.08.2005 made in I.A.No.141 of 2005 in O.S.No.348 of 2005, in WPMP.No.1362 of 2006 in WP.No.1145 of 2006.

16. It is further stated that later on 23.05.2007 a notification could be issued to conduct public auction on 06.06.2007 for the leasehold rights of the temple land on getting legal opinion from the Advocate, Guntur, who is the Standing Counsel for the Endowments Department. On 05.06.2007, the respondent received a telegram indicating the order of this Court to proceed with the auction and not to confirm the same. Pursuant to the orders of this Court, the respondent stopped conducting auction of the land situated in Sy.No.691 of Ilavaram Village to an extent of

Ac.1.20 cents. Unless the interim order is vacated, the institution will be put to loss and hardship.

17. These are the respective stands taken by the parties. Strong reliance was placed on proceedings in Rc.No.B2/1806/2005 dated 23.03.2005, which read as hereunder:

"PROCEEDINGS OF THE ASSISTANT COMMISSIONER:
ENDOWMENTS DEPARTMENT: GUNTUR

Present: Sri P. Narasimha Rao, B.Sc.,
Assistant Commissioner.

**Procgs.in Rc.No.B2/1806/2005, dated 23.03.2005**

Sub:- Endowments Department – Sri Rameswara Swamy Temple – Ilavaram (V) – Bhattiprolu (M) – Guntur District – Representation of Sri Angani Yedukondalu, S/o. Gudaru, Ilavaram (V), Bhattiprolu (M) – Determination of 'Landless Poor' – Orders – Issued.

Ref:- This office Rc.No.B2/1806/2005, dated 24.02.2005.

* * * *

In exercise of powers vested under Section 82 of the Act 30 of 1987 and as per the rules framed vide G.O.Ms.No.379, Revenue (Endowments-I) Department, dated 11.03.2003 and in view of the Supreme Court decision, the Assistant Commissioner, Endowments Department, Guntur issued notice to the concerned in the reference cited to attend for enquiry with necessary certificates and DCB Register. The applicant and executive authority have attended for enquiry on 28.02.2005 along with connected records and produced the same before the Assistant Commissioner, Endowments Department, Guntur. The Assistant Commissioner has enquired the matter and recorded the depositions and the following are findings:

(1) As per the DCB Register produced by the Executive Authority Sri A. Yedukondalu, S/o. Gudaru is continuing as tenant of Acs.1-21 cents wet land.

(2) As per the Certificates produced and as per the declaration of the applicant Sri A.Yedukondalu, S/o. Gudaru…….

i) As cultivating tenant is Acs.1-21 cents, wet, thus, the total extent held by the applicant either as owner or as cultivating tenant or as both did not exceed Acs.2-50 cents, wet land.

ii) His income other than from such lands did not exceed Rs.12,000/- per annum.

iii) He is not having residential property exceeding 200 sq. yards in urban area.

iv) He has produced declaration notarized by the notarary, produced income certificate issued by MRO, Battiprolu and also produced property certificate issued by MRO, Battiprolu.

In pursuance of the enquiry and with reference to the records and other evidences produced by the applicant and Executive Authority, the Assistant Commissioner, Endowments Department, Guntur hereby determine Sri A.Yedukondalu, S/o. Gudaru, Ilavaram (V), Bhattiprolu Mandal, Guntur District, cultivating tenant of Acs.1-21 cents, wet land, relates to Sri Rameswara Swamy Temple, Ilavaram (V), Bhattiprolu Mandal, Guntur District as 'landless poor person' as defined under Section 82 of the APC & HRI and Endowments Act 30 of 1987.

Sd/-
Assistant Commissioner.

To

1. Sri A. yedukondalu, S/o. Gudari, Ilavaram (V), Bhattiprolu Mandal, Guntur District.
2. The Manager of Sri Rameswara Swamy Temple, Ilavaram (V), Bhattiprolu Mandal, Guntur District, who is requeted to serve the order to No.1 and obtain and submit acknowledgement to that effect.
3. Copy submitted to the Commissioner, Endowments Department, A.P., Hyderabad for favour of kind information.
4. copy submitted to the Regional Joint Commissioner of Endowments, MZ-II, Tirupati for favour of kind information.
5. Copy submitted to the Deputy Commissioner of Endowments, Guntur for favour of kind information.
6. Copy to the Inspector, Endowments Department, Repalle."

18. It is needless to say that in the said order, the writ petitioner was declared as “landless poor person” as defined under Section 82 of the Act.

19. The main grievance of the petitioner is that the action of the Manager of the respondent temple is aimed at with a view to deprive the rights of the petitioner to avail the benefits under Section 82 of the Act.

20. In the light of the facts and circumstances and since it is brought to the notice of this Court that the said order dated 23.03.2005 had not been questioned at all, in a way the same had attained finality.

21. In the peculiar facts and circumstances and also in the light of the specific stand taken in the counter-affidavit by the respondent institution, the matter may have to be reconsidered and in view of the same, let the competent authority reconsider the whole issue in the light of the proceedings in Rc.No.B2/1806/2005 dated 23.03.2005 and take appropriate decision in this regard within a period of two months from the date of receipt of a copy of this order. It is needless to say that the statutory orders made under the provisions of the Act cannot be totally ignored.

22. Accordingly, the writ petition is disposed of with the above directions. No order as to the costs.

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**P.S. NARAYANA, J**

Date: 07.12.2007
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